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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,627	01/16/2004	Raymond Findleton	P68.2-11447-US01	1231

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VIDAS, ARRETT & STEINKRAUS, P.A.
6109 BLUE CIRCLE DRIVE
SUITE 2000
MINNETONKA, MN 55343-9185

EXAMINER

LHYMN, EUGENE

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 04/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary	Application No. 10/759,627	Applicant(s) FINDLETON, RAYMOND	
	Examiner Eugene Lhymn	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4/22/04, 5/17/04</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2, 8-11, 12-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Cooke et al. (US D248335). With respect to claim 1, Cooke et al. discloses the following:

- A base (Fig. 1 below)
- Continuous wall extending up from base
- Gripping means (Fig. 1 below)
- Dipping section (interior of container)
- Inclined tongue portion (Fig. 1 below)

With respect to claim 1, Cooke et al. discloses the following:

- A base
- Continuous wall extending up from base
- Gripping means (Fig. 1B below)
- Dipping section (interior of container)
- Inclined tongue portion (Fig. 1B below)

With respect to claim 2, Cooke et al. discloses the container having a center of gravity positioned between the gripping means (Fig. 1B below) and tongue portion, wherein a torque is inherently generated when a user lifts the container.

With respect to claim 8, Cooke et al. discloses the gripping means comprising at least one recess in the sidewall (Fig. 1 below).

With respect to claim 9, Cooke et al. discloses the gripping means comprising a first and second grip portion (Fig. 1 below).

With respect to claim 10, Cooke et al. discloses at least one recess extending upwards less than the wall height (Fig. 1 below).

With respect to claim 11, Cooke et al. discloses the gripping means having ridges as shown in Fig. 3 below.

With respect to claim 12, Cooke et al. discloses the dipping section width and tongue width being substantially equal (Fig. 1 below).

With respect to claim 13, Cooke et al. discloses the dipping section width being in the range of 85-115% of the tongue portion width (Fig. 1 below).

With respect to claim 14, Cooke et al. discloses the dipping section including a tapered portion adjacent gripping means (Fig. 6 below).

With respect to claim 15, Cooke et al. discloses the tongue portion including a leading edge, wherein the leading edge is the end edge of the tongue (Fig. 1 below).

With respect to claim 16, Cooke et al. discloses the tongue portion being configured to allow a brush having a width of 3 inches to be dabbed thereon (Fig. 1 below).

With respect to claim 17, Cooke et al. discloses the tongue portion being at an angle of 45 degrees (Fig. 6 below).

With respect to claims 18-19, Cooke et al. discloses the tongue portion including side edge barriers, wherein the barriers are an extension of the wall extending from the base (Fig. 1 below).

With respect to claim 20, Cooke et al. discloses the wall extending from the base having an outward taper (Fig. 6 below).

With respect to claim 21, Cooke et al. discloses the gripping means comprising at least one recess extending from the container base (Fig. 1 below).

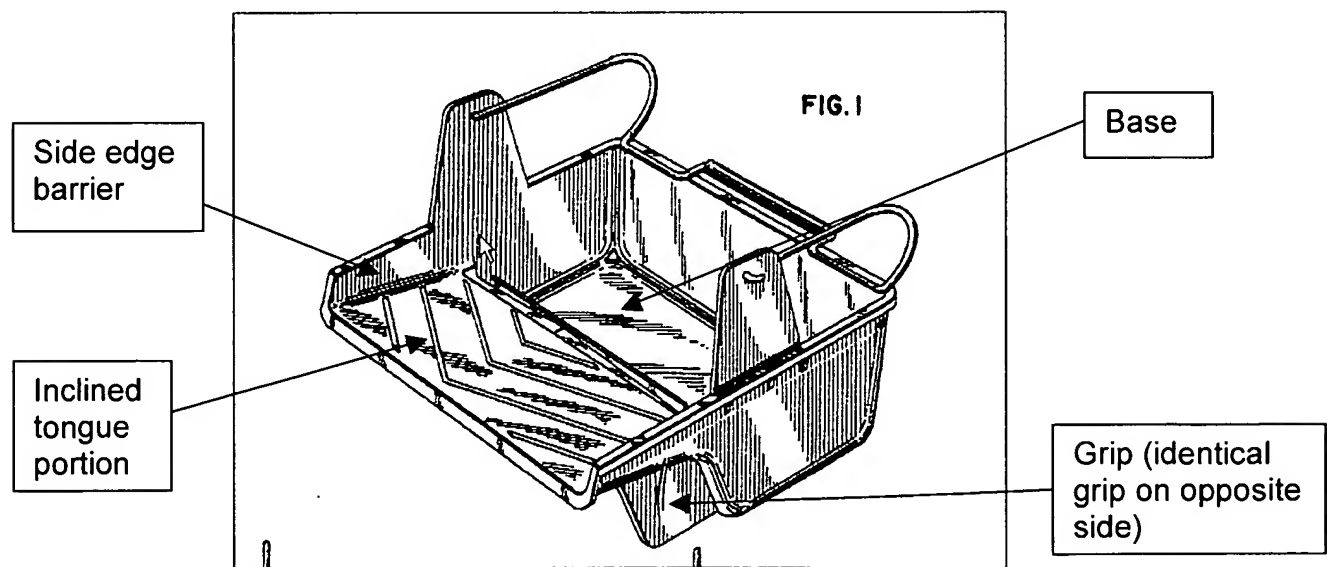


Figure 1

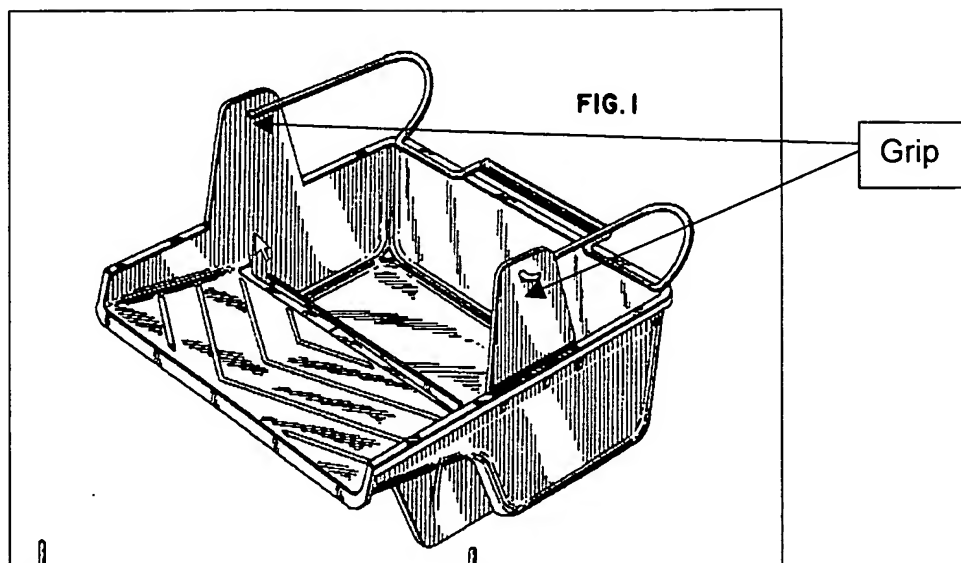
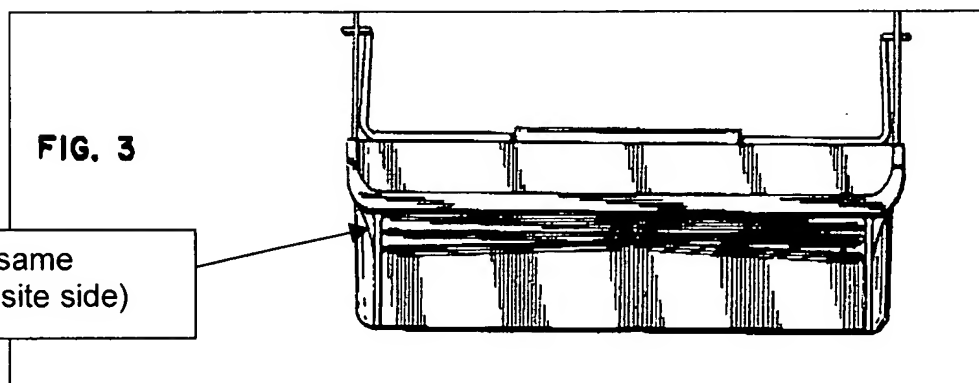
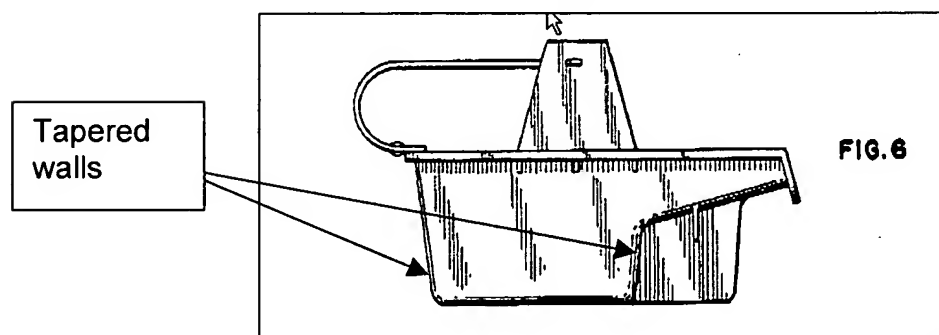


Figure 1B



3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 3727

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-4 are rejected under 35 U.S.C. 102(e) as being anticipated by Bebak (US 6419106 B1). With respect to claim 1, Bebak discloses the following:

- A base (Fig. 1)
- Continuous wall extending up from base
- Gripping means 12
- Dipping section (interior of container)
- Inclined tongue portion 16B & 18

With respect to claim 2, Bebak discloses the container having a center of gravity positioned between the gripping means and tongue portion, wherein a torque is inherently generated when a user lifts the container.

With respect to claims 3-4, Bebak discloses the torque generated being inherently no more than 0.8 or 0.6 foot-pounds.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3727

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 3-4 are rejected under 35 U.S.C. 103(a) as being obvious over Cooke et al. With respect to claims 3-4, Cooke et al. discloses the claimed invention except for torque generated being no more than 0.8 or 0.6 foot-pounds. It would have been obvious to one having ordinary skill in the art at the time the invention was made to design the torque generated to be no more than 0.8 or 0.6 foot-pounds since it has been held that discovering an optimum value of a result-effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

7. Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beback in view of Pereira Da Silva (US 6006901). With respect to claims 5-7, Beback discloses the claimed invention except for the gripping means extending at least 50%, 45%, and 40% of said length. However, Pereira Da Silva teaches a container having recessed handles that extend at least 50% (which includes 45% & 40%) along the length of the base, thereby providing an alternate gripping means. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to replace the handle of Beback with that of Pereira Da Silva so as to provide an alternate gripping means that extends at least 50% (which includes 45% & 40%) along the length of the base.


Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 for all relevant and referenced prior art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eugene Lhymn whose telephone number is 571-272-8712. The examiner can normally be reached on MTWT 6-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Stephen K. Cronin
Primary Examiner